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20 UNITED STATES DISTRICT COURT
21 FOR THE NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 AMERICAN FEDERATION OF
24 GOVERNMENT EMPLOYEES, AFL-CIO;
25 AMERICAN FEDERATION OF STATE
26 COUNTY AND MUNICIPAL EMPLOYEES,
27 AFL-CIO, et al.,

28 Plaintiffs,

v.

UNITED STATES OFFICE OF PERSONNEL
MANAGEMENT, et al.,

Defendants.

Case No. 3:25-cv-01780-WHA

**SUPPLEMENTAL DECLARATION OF
PACE SCHWARZ**

SUPPLEMENTAL DECLARATION OF PACE SCHWARZ

I, Pace Schwarz, declare as follows:

1. I am over 18 years of age and competent to give this declaration. This declaration is based on my personal knowledge, information, and belief.

2. I am a Research Assistant in the Office of the General Counsel for the American Federation of Government Employees, AFL-CIO (“AFGE”). In my role as a Research Assistant, I conduct research for AFGE’s attorneys and assist with certification and delegation matters. Since February 18, 2025, however, I have spent most of my time reviewing notices and letters sent to AFGE related to actions taken by the current Presidential administration, including from terminated probationary employees. This declaration supplements the previous declaration I submitted in this case on February 26, 2025. *See* Dkt 39-4.

3. This May, I received from terminated probationary employees copies of notices distributed by the Department of Agriculture (“USDA”), Department of Health and Human Services (“HHS”), Department of Housing and Urban Development (“HUD”), and the Department of the Interior (“DOI”). These notices were sent in connection with this Court’s April 18, 2025 preliminary injunction. I understand that many more employees received substantially identical notices. Consistent with the Court’s order, the notices informed probationary employees that their terminations “w[ere] not ‘performance’ or fitness based but w[ere] made as part of a government-wide mass termination.” True and correct copies of these notices are attached hereto as Exhibit A.

4. Each of these notices further state that “[Agency] is appealing the Court’s April 18, 2025 Order and *believes it to be both legally and factually erroneous*. Nonetheless, [Agency] must comply with the Order unless and until it is stayed or reversed by an appellate court.” (emphasis added).

5. Numerous employees who received these notices have raised concerns about the government’s compliance with the Court’s April 18 order. These employees care deeply about being able to demonstrate definitively that they were not in fact fired for performance reasons. But by insisting in the notices that the Court’s April 18 ruling was “legally and factually erroneous,” the agencies appear to be taking the position that the recipients of these notices actually were terminated


1 for performance reasons. The caveat undermines the very purpose of the Court's injunction, and may
2 make it more difficult for these employees to obtain future employment.

3 6. The notice from HUD does not identify the individual employee by name. *See* Exhibit
4 A at 3. This, too, makes it more difficult for employees who received such notices to demonstrate to
5 potential employers and others that they were not in fact terminated for performance reasons.

6 7. Terminated probationary employees have also reached out to AFGE with concerns that,
7 despite this Court's April 18 order, their personnel files still show that they were terminated for
8 performance reasons. Every federal employee has a permanent official personnel file. An employee's
9 separation from employment is recorded on an employee status form called an SF-50, which lists the
10 "legal authority" for the separation. Even after the May 8 deadline for compliance with the Court's
11 April 18 order had elapsed, numerous AFGE members obtained SF-50 forms which still indicated that
12 they had been terminated for performance reasons. In particular, these forms listed the "legal authority"
13 for separation as "Reg 315.804." According to Chapter 31 of OPM's "Guide to Processing Personnel
14 Actions,"¹ this refers to 5 CFR §315.804, "Termination of probationers for unsatisfactory performance
15 or conduct." True and correct copies of SF-50 forms I received from terminated probationary
16 employees are attached hereto as Exhibit B.

17 8. These SF-50 forms also include the Authority Code "L2M." *See* Exhibit B. According
18 to Chapter 31 of OPM's "Guide to Processing Personnel Actions," Authority Code L2M signifies that
19 the employee's termination is either "Based on unacceptable or unsatisfactory performance or other
20 factors unrelated to misconduct or delinquency" or "Based on employee's conduct or delinquency after
21 entrance on duty."

22 I declare under penalty of perjury under the laws of the United States that the foregoing is true
23 and correct. Executed this 4th day of June 2025 in Washington, DC.

24 

25 Pace Schwarz

26
27
28 ¹ Available at <https://www.opm.gov/policy-data-oversight/data-analysis-documentation/personnel-documentation/processing-personnel-actions/gppa31.pdf>.

Exhibit A

----- Forwarded message -----

From: **Assistant Secretary for Administration** <ASA.CR@usda.gov>

Date: Wed, May 7, 2025, 14:25

Subject: Message from the Office of the Assistant Secretary for Administration—Probationary Termination Employee Notification

To: [REDACTED]

Dear [REDACTED],

This letter is being provided to you in accordance with the preliminary injunction issued by the Northern District of California in *American Federation of Government Employees v. U.S. Office of Personnel Management*, No. 3:25-cv-1780 WHA (N.D. Cal.).

On April 18, 2025, U.S. District Judge William Alsup of the Northern District of California required the U.S. Department of Agriculture (USDA) to provide you with "a written statement, directed to the employee individually, stating that your termination was not 'performance' or fitness based but was made as part of a government-wide mass termination." Judge Alsup's decision is attached.

USDA is appealing the Court's April 18, 2025, Order and believes it to be both legally and factually erroneous. Nonetheless, USDA must comply with the Order unless and until it is stayed or reversed by an appellate court.

In accordance with the Court's April 18, 2025, Order, USDA hereby informs you, [REDACTED] as required by the Court, that your earlier termination was not performance or fitness based but was made as part of a government-wide mass termination. Please refer to the following USDA website for updates regarding the status and litigation of probationary employees: <https://www.usda.gov/about-usda/news/press-releases/2025/03/11/usda-status-update-probationary-employees>.

This letter (i) is to be implemented consistent with applicable law, and (ii) shall not serve as any basis for liability against USDA or any other agency or instrumentality of the Federal government, before any court or in any administrative proceeding. USDA reserves all rights.

Regards,

Office of the Assistant Secretary for Administration U.S. Department of Agriculture



DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Washington, D.C. 20201

May 8, 2025

MEMORANDUM FOR:

FROM:

Tom Nagy, Chief Human Capital Officer

SUBJECT:

Notice to Terminated Probationary Employees Required by Judge Alsup's April 18, 2025, Order

Dear [REDACTED]

This letter is being provided to you in accordance with the preliminary injunction issued by the Northern District of California in *American Federation of Government Employees v. U.S. Office of Personnel Management*, No. 3:25-cv-1780 WHA (N.D. Cal.).

On April 18, 2025, U.S. District Judge William Alsup of the Northern District of California required the Department of Health and Human Services ("HHS") to provide you with "a written statement, directed to [you] individually, stating that [your] termination was not 'performance' or fitness based but was made as part of a government-wide mass termination." Judge Alsup's decision is attached.

HHS is appealing the Court's April 18, 2025, Order and believes it to be both legally and factually erroneous. Nonetheless, HHS must comply with the Order unless and until it is stayed or reversed by an appellate court.

In accordance with the Court's April 18, 2025, Order, HHS hereby, informs you, as required by the Court, that your earlier termination "was not 'performance' or fitness based but was made as part of a government-wide mass termination."

This letter is to be (i) implemented consistent with applicable law, and (ii) it shall not serve as any basis for liability against HHS or any other agency or instrumentality of the Federal government, before any court or in any administrative proceeding. HHS reserves all rights.

Regards,

Tom Nagy, Chief Human Capital Officer



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE DEPUTY SECRETARY
WASHINGTON, DC 20410-0050

May 7, 2025

MEMORANDUM FOR:

FROM: Matthew Ammon, Performing the Delegable Duties of the Deputy Secretary, S

SUBJECT: Notice to Terminated Probationary Employees Required by Judge Alsup's April 18, 2025, Order

This letter is being provided to you in accordance with the preliminary injunction issued by the Northern District of California in *American Federation of Government Employees v. U.S. Office of Personnel Management*, No. 3:25-cv-1780 WHA (N.D. Cal.).

On April 18, 2025, U.S. District Judge William Alsup of the Northern District of California required the U.S. Department of Housing and Urban Development (HUD) to provide you with "a written statement, directed to you individually, stating that your termination was not 'performance' or fitness based but was made as part of a government-wide mass termination."

HUD is appealing the Court's April 18, 2025, Order and believes it to be both legally and factually erroneous. Nonetheless, HUD must comply with the Order unless and until it is stayed or reversed by an appellate court.

In accordance with the Court's April 18, 2025, Order, HUD hereby, informs you, as required by the Court, that your earlier termination "was not 'performance' or fitness based but was made as part of a government-wide mass termination."

This letter is to be (i) implemented consistent with applicable law, and (ii) it shall not serve as any basis for liability against HUD or any other agency or instrumentality of the Federal government, before any court or in any administrative proceeding. HUD reserves all rights.

[REDACTED]

From: Deputy Director Management and Administration, NPS <Deputy_Director_Mgmt_and_Admin@nps.gov>
Sent: Monday, May 5, 2025 3:57 PM
To: [REDACTED]
Subject: Notification of Preliminary Injunction

Dear [REDACTED],

This letter is being provided to you in accordance with the preliminary injunction issued by the Northern District of California in American Federation of Government Employees v. U.S. Office of Personnel Management, No. 3:25 cv 1780 WHA (N.D. Cal.).

On April 18, 2025, U.S. District Judge William Alsup of the Northern District of California required Department of the Interior (DOI) to provide you with "a written statement, directed to you individually, stating that your termination was not 'performance' or fitness based but was made as part of a government wide mass termination." Judge Alsup's decision is attached.

DOI is appealing the Court's April 18, 2025 Order and believes it to be both legally and factually erroneous. Nonetheless, DOI must comply with the Order unless and until it is stayed or reversed by an appellate court.

In accordance with the Court's April 18, 2025 Order, DOI hereby informs you, as required by the Court, that your earlier termination "was not 'performance' or fitness based but was made as part of a government wide mass termination."

This letter is to be (i) implemented consistent with applicable law, and (ii) it shall not serve as any basis for liability against DOI or any other agency or instrumentality of the Federal government, before any court or in any administrative proceeding. DOI reserves all rights.

Regards,

Aaron Dowe
Acting Deputy Director Management and Administration



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, NW Washington, DC 20240



This letter is being provided to you in accordance with the preliminary injunction issued by the Northern District of California in *American Federation of Government Employees v. U.S. Office of Personnel Management*, No. 3:25-cv-1780 WHA (N.D. Cal.).

On April 18, 2025, U.S. District Judge William Alsup of the Northern District of California required Department of the Interior (DOI) to provide you with “a written statement, directed to you individually, stating that your termination was not ‘performance’ or fitness based but was made as part of a government-wide mass termination.” Judge Alsup’s decision is attached.

DOI is appealing the Court’s April 18, 2025 Order and believes it to be both legally and factually erroneous. Nonetheless, DOI must comply with the Order unless and until it is stayed or reversed by an appellate court.

In accordance with the Court’s April 18, 2025 Order, DOI hereby informs you, as required by the Court, that your earlier termination “was not ‘performance’ or fitness based but was made as part of a government-wide mass termination.”

This letter is to be (i) implemented consistent with applicable law, and (ii) it shall not serve as any basis for liability against DOI or any other agency or instrumentality of the Federal government, before any court or in any administrative proceeding. DOI reserves all rights.

Regards,

Aaron Dowe
Acting Deputy Director Management and
Administration

Exhibit B

Standard Form 50

Rev 7/91

U.S. Office of Personnel Management

FPM Supp. 296-33, Subch. 4.

NOTIFICATION OF PERSONNEL ACTION

1. Name (Last, First, Middle)		3. Date of Birth		4. Effective Date 05-08-2025	
FIRST ACTION			SECOND ACTION		
5-A. Code 385	5-B. Nature of Action Term, during prob/trial period		6-A. Code	6-B. Nature of Action	
5-C. Code L2M	5-D. Legal Authority Reg 315.804		6-C. Code	6-D. Legal Authority	
5-E. Code	5-F. Legal Authority		6-E. Code	6-F. Legal Authority	
7. FROM: Position Title and Number			15. TO: Position Title and Number		
8. Pay Plan GS			9. Occ. CD	10. Grade/Level	11. Step/Rate
12. Total Salary		13. Pay Basis		16. Pay Plan	17. Occ. CD
18. Grade/Level		19. Step/Rate		20. Total Salary/Award	
21. Pay Basis		22. Name and Location of Position's Organization			
12A. Basic Pay		12B. Locality Adj.		12C. Adj. Basic Pay	
12D. Other Pay		20A. Basic Pay		20B. Locality Adj.	
20C. Adj. Basic Pay		20D. Other Pay			
14. Name and Location of Position's Organization National Institutes of Health National Institutes of Health					
EMPLOYEE DATA					
23. Veterans Preference		24. Tenure		25. Agency Use	
1-None 2-5 Point 3-10 Point/Disability 4-10 Point/Compensable 5-10 Point/Other 6-10 Point/Compensable/30%		0-None 1-Permanent 2-Conditional 3-Indefinite		26. Veterans Preference for RIF YES <input checked="" type="checkbox"/> NO <input type="checkbox"/>	
27. FEGLI		28. Annuitant Indicator		29. Pay Rate Determinant	
30. Retirement Plan		31. Service Comp. Date (Leave)		32. Work Schedule	
33. Part-Time Hours Per Biweekly Pay Period		34. Position Occupied		35. FLSA Category	
36. Appropriation Code		37. Bargaining Unit Status			
38. Duty Station Code		39. Duty Station (City-County-State or Overseas Location)			
40. Agency Data		41.		42.	
43.		44.		PAR Number:	
45. Remarks					
- SF 2819 was provided. Life insurance coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract). - Health benefits coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract). You are also eligible for temporary continuation of your FEHB coverage for up to 18 months. - Forwarding address: - Not entitled to severance pay. - Lump-sum payment to be made for any unused annual leave. - SF-8 issued to employee.					
46. Employing Department or Agency DEPARTMENT OF HEALTH AND HUMAN SERVICES			50. Signature/Authentication and Title of Approving Official		
47. Agency Code HE38			48. Personnel Office ID		
49. Approval Date 05-13-2025			JULIE BROUSSARD BERKO Dir., Office of Human Resources		

5-Part

1 -

Employee Copy

 Editions Prior to 7/91 Are Not Usable After
 6/30/93
 NSN 7540-01-333-6236

NOTIFICATION OF PERSONNEL ACTION

U.S. Office of Personnel Management

FPM Supp. 296-33, Subch. 4.

1. Name (Last, First, Middle) [REDACTED]				2. Social Security Number [REDACTED]		3. Date of Birth [REDACTED]		4. Effective Date 05-08-2025			
FIRST ACTION					SECOND ACTION						
5-A. Code 385		5-B. Nature of Action Term. during prob/trial period			6-A. Code		6-B. Nature of Action				
5-C. Code L4M		5-D. Legal Authority Reg 315.804 Eq. Sep-unsat perf/conduct-agency auth.			6-C. Code		6-D. Legal Authority				
5-E. Code		5-F. Legal Authority			6-E. Code		6-F. Legal Authority				
7. FROM: Position Title and Number [REDACTED]					15. TO: Position Title and Number						
8. Pay Plan GS		9. Occ. CD [REDACTED]		10. Grade/Level [REDACTED]		11. Step/Rate [REDACTED]		12. Total Salary [REDACTED]		13. Pay Basis PA	
16. Pay Plan		17. Occ. CD		18. Grade/Level		19. Step/Rate		20. Total Salary/Award		21. Pay Basis	
12A. Basic Pay [REDACTED]		12B. Locality Adj. [REDACTED]		12C. Adj. Basic Pay [REDACTED]		12D. Other Pay [REDACTED]		20A. Basic Pay		20B. Locality Adj.	
20C. Adj. Basic Pay		20D. Other Pay		20A. Basic Pay		20B. Locality Adj.		20C. Adj. Basic Pay		20D. Other Pay	
14. Name and Location of Position's Organization National Institutes of Health National Institutes of Health [REDACTED]					22. Name and Location of Position's Organization						
EMPLOYEE DATA											
23. Veterans Preference 1 1-None 3-10 Point/Disability 5-10 Point/Other 2-5 Point 4-10 Point/Compensable 6-10 Point/Compensable/30%				24. Tenure 2 0-None 2-Conditional 1-Permanent 3-Indefinite		25. Agency Use		26. Veterans Preference for RIF YES X NO			
27. FEGLI [REDACTED]				28. Annuitant Indicator [REDACTED]				29. Pay Rate Determinant 0 Regular Rate			
30. Retirement Plan [REDACTED]				31. Service Comp. Date (Leave) [REDACTED]				32. Work Schedule F Full Time			
33. Part-Time Hours Per Biweekly Pay Period											
POSITION DATA											
34. Position Occupied 2 1-Competitive Service 3-SES General 2-Excepted Service 4-SES Career Reserved				35. FLSA Category E E-Exempt N-Nonexempt		36. Appropriation Code [REDACTED]			37. Bargaining Unit Status [REDACTED]		
38. Duty Station Code [REDACTED]				39. Duty Station (City-County-State or Overseas Location) [REDACTED]							
40. Agency Data				41.		42.		43.		44. PAR Number:	
45. Remarks - SF 2819 was provided. Life insurance coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract). - Health benefits coverage is extended for 31 days during which you are eligible to convert to an individual policy (nongroup contract). You are also eligible for temporary continuation of your FEHB coverage for up to 18 months. - Forwarding address: [REDACTED] - Not entitled to severance pay. - Lump-sum payment to be made for any unused annual leave. - SF-8 issued to employee.											
46. Employing Department or Agency DEPARTMENT OF HEALTH AND HUMAN SERVICES						50. Signature/Authentication and Title of Approving Official JULIE BROUSSARD BERKO Dir., Office of Human Resources					
47. Agency Code HE38		48. Personnel Office ID [REDACTED]		49. Approval Date 05-13-2025							